IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 884 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHAMMAD SHAFI ALLAHRAKHA SHAIKH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 884 of 2004
MR MA BUKHARI for Petitioner
MS CHANDARANA AGP for Respondents No. 1-4
NOTICE SERVED BY DS for Respondent No. 5

CORAM : HON'BLE MR.JUSTICE D.K.TRIVEDI
and
HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 23/08/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.K.TRIVEDI)

1. Rule. Ms.Chandarana, learned AGP waives service of rule, for the respondents - State authorities namely respondents No.1 to 4. The respondent No.5 is served. Considering the challenge in this petition, by the consent of Mr.Bukhari, learned counsel appearing for the petitioner and Ms.Chandarana, learned A.G.P. appearing for the respondents, rule is fixed forthwith.

2. Heard Mr.M.A.Bhukhari, learned advocate appearing for the petitioner and Ms.Chandarana, learned A.G.P. appearing for the respondents, who in turn, has taken us through the petition and the documents attached thereto. The petitioner has filed this petition under Article 226 of the Constitution of India supported with an affidavit of the petitioner dated 22nd January, 2004 in which the petitioner has prayed for issuance of a writ of mandamus or a writ in the nature of mandamus or any other appropriate writ, or any other appropriate writ, order or direction for quashing and setting aside the notice issued by respondent No.2 namely Dy. Executive Engineer, Road and Building Sub-Division, Kapadvanj dated 17.01.2004 and further prayed that to direct the officers of the respondents not to demolish the shop 12 feet X 8 feet construction, on 17 feet X 12 feet land bearing Survey No.6637/A, Revenue Survey No.150/A/1, Opp. Triveni Park, Kapadvanj and by way of interim relief, the petitioner has prayed that respondents be restrained by directing not to demolish the said shop in which the petitioner is running a business in the name and style of "Sahyog Auto Parts and Garage", through his nephew and further prayed that the respondents be directed to maintain status-quo. The petition was presented before the Registry of this Court on 22.01.2004 and as per the order dated 23.01.2004, the Division Bench has issued notice, made it returnable on 16.02.2004 and by way of ad-interim relief, the respondent authority was restrained from taking action pursuant to the impugned notice dated 17.01.2004 till the next date, by permitting D.S. As found from the record of this petition, from the returnable date, considering the request made by the learned A.G.P. for adjournment and accordingly, the matter was adjourned to 16.03.2004 and the interim relief granted earlier was extended till the next date. Thereafter, from time to time, the matter appeared on adjourned date and the matter was adjourned and ad-interim relief extended is still in force.

3. Mr.M.A.Bukhari, learned advocate appearing for the petitioner has in support of his contention, has contended before us that the impugned notice deserves to be quashed and set aside. In view of the fact that without giving any opportunity the authority has called upon the petitioner to remove the unauthorized structure immediately and if the same is not removed, after service of the notice within three days then the authority shall remove the same at the costs of the petitioner and the action will be initiated against the petitioner. Mr.Bukhari has vehemently urged that such notice issued by the authority indicate of giving no opportunity to the petitioner and according to him, the respondent authority was required to give an opportunity to produce the documents in support of his case. In support of his contention, he has placed reliance that even as back as in the year 1989, the respondent No.2 has under his letter dated 15.11.1989 informed the petitioner that the construction is against the Ribbon Development Rules and the construction, which was carried out, is without obtaining permission and the petitioner had satisfied the authority under his letter dated 20.11.1989 by producing certain documents, to show that the construction is not illegal. The said letter issued by the respondent No.2 and the reply submitted by the petitioner is annexed with this petition at Annexure-A and B, Annexure-C is the another letter issued by the respondent No.2 to the petitioner on 03.05.1995, by which again the petitioner was informed for removal of such unauthorized construction. The petitioner has also relied upon the certificates issued by the Chief Officer of Kapadvanj Nagarpalika on 08.04.1999 and 30.12.1989 and the photographs and the bills issued by Uday Studio dated 01.10.1989. The petitioner has also averred that the petitioner is connected with the political party and in past, he was Vice Chairman of the Nagar Prathmik Shikshan Samity and also President of M.J.D. of Kapadvanj Taluka and the officers of the respondent authority are keeping grudge against the petitioner due to political enmity as well as personal illwill and to harass the petitioner. The notice in question was issued and they wanted to see that the shop in which the petitioner through his nephew is running a business be demolished, so the petitioner to suffer by way of damages in the property as well as in his business. In reply to the notice, on behalf of the respondent No.1 an affidavit is filed by Shri K.I.Joshi, Deputy Executive Engineer, Road and Building, Sub-Division dealing with the contention raised in the petition and also annexed the sketch of the site where the disputed garage is found for which the notice was issued to the petitioner.

4. Ms.Chandarana, learned A.G.P. appearing for the respondent - authority has taken us through the said reply and contended before us that in view of the fact that earlier in the year 1989 and 1995, the notices were issued to the petitioner as the construction was illegal and unauthorized, which is clearly established from the sketch produced along with the affidavit by Shri Choksi. So far as the malafide attributed by the petitioner, the same was also dealt with by Shri Choksi in para-6 of the petition, which clearly shows that the averments made by the petitioner are vague and in general nature. According to her, no case is made out by the petitioner and the construction which is found is illegal and unauthorized and the same deserves to be removed and prayed for dismissal of the present petition.

5. In light of the contention raised before us and without expressing anything on the contention raised in this petition, on considering the notice in question issued on 17.01.2004 clearly indicates that no opportunity was given to the petitioner and the petitioner was called upon to remove the authorized structure by giving three days time failing which the authority was to remove the said unauthorized structure at the costs of the petitioner. In view of the fact that earlier notice, which was given in the year 1989 by which the petitioner has also submitted reply by furnishing documents under his letter dated 20.12.1989 and no actions were taken till the second notice was issued on 03.05.1999 and even, thereafter, no steps were taken by the authority till the notice dated 17.01.2004 is issued to the petitioner. The petitioner had no opportunity to satisfy the authority by producing documents and when the earlier notice was issued in the year 1989, the petitioner is furnished the certain documents and no steps were taken by the authority in respect of the said notice.

6. In our view, without expressing anything on the contention raised before us in the petition and the reply affidavit filed by the respondent - authority and as the notice dated 17.01.2004 issued by the respondent authority giving no opportunity to the petitioner and the said notice stayed till today, as per the Court's order. The ends of justice will be met by directing the petitioner to satisfy to the said authority by furnishing documents in support of his case that the construction on the land is authorized and legal and submit to the said authority. The reply of the petitioner with the documents which the petitioner relies by end of

September, 2004 and the authority accordingly is directed to consider the reply submitted by the petitioner with the documents furnished by him by giving opportunity of hearing to the petitioner and to decide the same immediately on receiving the reply from the petitioner and till then the authority shall not implement the notice.

7. This petition is disposed off in the above terms. Rule is made absolute to the aforesaid extent. No order as to costs.

[D. K. Trivedi,J.]

[K. M. Mehta,J.]

(vijay)